

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DORIS CANDELARIE, as trustee of the
MARCEL A. TRUJILLO 2503(c) TRUST and
the DOMINIC A. TRUJILLO 2503(c) TRUST,
ANTHONY TRUJILLO, and DENISE TRUJILLO,

ORDER
08-CV-1714(JS)(AKT)

Plaintiffs,

-against-

SCIENTIFIC INNOVATIONS, INC., JOSEPH
H. BRONDO, JR., and PHYLLIS BRONDO,

Defendants.

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APPEARANCES

For Plaintiffs:

Doris Candelarie
as Trustee

No appearances.

Anthony Trujillo

Anthony Trujillo, pro se
200 Clayton Street, Unit 2
Denver, CO 80206

Denise Trujillo

Denise Trujillo, pro se
4361 Augusta Drive
Broomfield, CO 80023

For Defendants:

Richard E. Hershenson, Esq.
30 Broad Street, 15th Floor
New York, NY 10004

SEYBERT, District Judge:

On June 22, 2011, this Court granted Mr. Sean Thomas O'Leary's motion to withdraw as counsel for Plaintiffs and ordered Plaintiff Doris Candelarie, as Trustee suing on behalf of the Marcel A. Trujillo 2503(c) Trust and the Dominic A. Trujillo 2503(c) Trust (the "Trusts"), to obtain new counsel

within thirty (30) days.¹ Ms. Candelarie failed to do so. In a Memorandum and Order dated August 3, 2011, the Court reminded Ms. Candelarie that she may not represent the Trusts pro se and warned that failure to obtain counsel within ten (10) days would result in dismissal of the Trusts' claims.

Five months have transpired and counsel has yet to file a notice of appearance on behalf of Ms. Candelarie and the Trusts. Since a non-attorney trustee may not represent the interests of a trust pro se, all of Ms. Candelarie's claims as Trustee of the Trusts are hereby DISMISSED, see Gabayzadeh v. Taylor, 639 F. Supp. 2d 298, 302 (E.D.N.Y. 2009) adopted by 2009 WL 2983013 (E.D.N.Y. Sept. 14, 2009), and the Clerk of the Court is respectfully directed to terminate Ms. Candelarie as a Plaintiff in this action.

On the other hand, the Plaintiffs Anthony Trujillo and Denise Trujillo may proceed pro se as they are representing their own interests and not those of the Trusts. See Lattanzio v. COMTA, 481 F.3d 137, 139 (2d Cir. 2007). As Magistrate Judge A. Kathleen Tomlinson noted in her Order dated January 11, 2012, "the first claim in the Amended Complaint is ripe for adjudication" (Docket Entry 115); therefore, Plaintiffs Anthony and Denise Trujillo are ORDERED to file a status update with the

¹ The Court notes that this is the third set of Plaintiffs' counsel that has withdrawn.

Court on or before February 6, 2012 detailing (1) the status of discovery with respect to the first claim in the Amended Complaint and (2) whether they are ready to proceed to trial on that claim. If Plaintiffs are not ready to set a trial date, they must explain why additional time is needed. If Defendants wish to submit any response to Plaintiffs' letter, it must be filed on or before February 13, 2012.

CONCLUSION

For the foregoing reasons, it is hereby ORDERED that:

(1) The claims of Doris Candelarie on behalf of the Trusts are DISMISSED, and the Clerk of the Court is directed to terminate Ms. Candelarie as a Plaintiff in this action;

(2) Plaintiffs Anthony and Denise Trujillo shall each file a status update on or before February 6, 2012 indicating the status of discovery on the first claim in the Amended Complaint and their readiness for trial on that claim; and

(3) Defendants may file a response to Plaintiffs' letter on or before February 13, 2012.

The Clerk of the Court is requested to send a copy of this Order to the pro se Plaintiffs at their respective addresses and to Ms. Candelarie at 9597 Ute Drive, Golden, CO 80304.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: January 17, 2012
Central Islip, NY